

DAVIS OIL CO.

IBLA 79-252

Decided October 22, 1979

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, dismissing a protest against rejection of competitive oil and gas lease bid. W 66870.

Affirmed.

1. Oil and Gas Leases: Competitive Leases

Under 43 CFR Part 3120 an oil and gas "bid" must be submitted as well as a deposit, and where neither a per acre or total bid amount are included, the bid submission must be rejected despite argument the bid amounts may be determined from the deposit amount.

APPEARANCES: W. A. MacNaughton, Esq., General Counsel, Davis Oil Company, Houston, Texas; Stanley L. Grazis and Howard L. Boigon, Esqs., Davis, Graham, and Stubbs, Denver, Colorado, for Eurafrep, Inc., the adverse party.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Davis Oil Company appeals from a decision dated February 1, 1979, rendered by the Wyoming State Office, Bureau of Land Management (BLM), dismissing the Davis protest against rejection of its bid for competitive oil and gas lease W 66870.

In December 1978 BLM issued a notice of competitive oil and gas lease sale for land in Wyoming, designated as parcel 12. <sup>1/</sup> Under 43 CFR Subpart 3120 sealed bids were to be submitted, with the lease awarded to the qualified bidder offering the highest acceptable cash amount. All bids were submitted on bid form 3120-17.

The bid form contained columns for the total amount and for the per acre amount of the bid. A column was also provided for the amount

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<sup>1/</sup> Parcel 12 includes lots 1-11, sec. 18, T. 26 N., R. 113 W., sixth principal meridian, Wyoming, containing 377.40 acres.

of the deposit submitted with the bid, which by regulation was required to be at least one-fifth of the total amount. 2/

Appellant's form 3120-17 was timely submitted. Although the dollar amount of the deposit submitted was included on the form, appellant failed to include either the total amount or the per acre amount of its bid. For these reasons, BLM did not accept the bid.

Appellant filed a protest to the BLM decision. In its protest appellant stated the amount of the deposit submitted with the bid (\$7,482.01) was for one-fifth (1/5th) of the total amount of the bid, as required by the instructions for competitive oil and gas lease bidding. According to Davis, this information would have enabled BLM to determine the appellant's per acre bid and its total bid.

BLM dismissed the protest and stated in part:

There is nothing on any of the forms submitted by you, nor on the check, to indicate that the amount is for one-fifth the amount bid. There were 113 bids submitted for the January 17th sale and it would have been impossible to determine the amounts bid on each of them if all we had was the deposit submitted with each.

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\* \* \* [T]here is nothing to preclude the bidder from submitting the total amount bid as a deposit if he wishes, which some bidders have done.

Appellant argues that BLM's decision was an "arbitrary and capricious ruling and contrary to law." Its argument is premised on the proposition that the rules and regulations governing competitive bidding do not specifically require that the total or per acre amount be stated; rather, they only require bidders to submit with their bids a deposit equivalent to one-fifth of the total amount bid. Appellant therefore argues that since it submitted a deposit that was one-fifth of the total amount bid, its bid was in every way in compliance with the rules, regulations, and requirements of competitive bidding.

[1] The regulations contemplate that a bid must be submitted, in addition to a deposit. 43 CFR 3120.1-4(a)(b), 3120.2-2, and

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2/ Departmental regulation 43 CFR 3120.1-4(b) provides:

"The successful bidder at a sale by public auction must on the day of the sale, deposit with the authorized officer of the proper office or other officer conducting the sale, and each bidder, if the sale is by sealed bids, must submit with his bid the following: Certified check on a solvent bank, money order, or cash, for one-fifth of the amount bid by him."

3120.2-3. On appeal, Davis has submitted as Exhibit 4 copies of two statements, one of which was apparently attached to the Davis Oil Company check used to purchase the cashiers check and one of which could have at one time been attached to the cashiers check itself. While the statements do include the per acre and total bid amounts, Davis makes no clear allegation that the statement was submitted with the check to BLM. The Departmental record includes a copy of the cashiers check, without any attached statement. In a January 24, 1979, letter to BLM, appellant's Exploration Manager stated that "our check to Metro Bank for their Cashier's Check indicated that said Cashier's Check was for one fifth (1/5) of our bonus bid." By implication, the cashiers check itself did not so indicate.

Where an oil and gas lease bid is so unclear as to leave substantial doubt as to the rights and obligations which would arise from acceptance, the bid must be rejected. 43 Comp. Gen. 817, 820 (1964), cited in Patrick Petroleum Corp., 38 IBLA 93, 94 (1978). Davis submitted a bid in which neither a per acre bid nor a total bid can be determined. It would not have been legally permissible for BLM to make a conclusion as to the amount of bid intended, and hold the bidder to that amount. The bid could have been presumed to be for the amount of the deposit, \$7,482.01, or for five times that amount, or for any amount in between. It was clearly required that BLM reject the bid.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Joseph W. Goss  
Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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James L. Burski  
Administrative Judge

